

**BOROUGH OF DUMONT
BERGEN COUNTY, N.J.
EXECUTIVE SESSION MINUTES
MAY 6, 2014
6:30 PM**

Mayor Kelly called the meeting to order at 6:35pm

Flag Salute, Silent Prayer

Sunshine Law: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time and place of this regular meeting in the annual schedule and notice of regular meetings of this Governing Body. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to *The Record* and the *Ridgewood News*, posted on the Borough website and filed with the Borough of Dumont.

Roll Call:

Council members: Brophy, Correa, Hayes, Riquelme, Zamechansky-present

Mayor Kelly-present

#14-107 Appointment of Councilman to Fill Council Seat Vacated by Matthew Carrick

Motion to appoint Carl Manna: Councilwoman Zamechansky

Second: Councilwoman Correa

Roll call vote: Council members Brophy, Correa, Hayes, Riquelme, Zamechansky-yes

Oath of Office Administered to Carl Manna by Gregg Paster, Esq.

Roll Call: Council members: Brophy, Correa, Hayes, Manna, Riquelme, Zamechansky-present

Mayor Kelly-present

Councilman Hayes stated, for the record, that candidates whose names were submitted to fill the unexpired term were interviewed according to the protocol established by the Borough.

Motion to accept agenda as presented: Councilman Hayes

Second: Councilman Riquelme

All in favor.

Proclamation -Vantage Health System- Mental Health Awareness

Gary Vinci, Borough Auditor, is present.

Public Hearing on the 2014 Municipal Budget introduced March 18, 2014

Motion to open to the public for any comments or questions: Councilman Hayes

Second: Councilman Brophy

All in favor.

Motion to close to the public: Councilman Brophy

Second: Councilwoman Zamechansky

All in favor.

#14-108 Authorization to Amend the 2014 Municipal Budget

Mr. Paster stated for the record, that this resolution is just a formality in advance of adopting the budget due to an increase of less than ten percent from the budget introduction.

Councilman Brophy stated that Councilwoman Correa is donating her \$2,000 annual Council stipend to the Dumont Volunteer Ambulance Corps. Therefore, there will be a decrease in Council salary and an increase to the Ambulance line but no overall change in the current budget.

Motion to adopt: Councilwoman Zamechansky

Second: Councilman Riquelme

Roll call vote: Council members Brophy, Correa, Hayes, Riquelme, Zamechansky-yes
Councilman Manna-abstained

Public Hearing on the 2014 Municipal Budget Amendment

Motion to open to the public for questions or comments: Councilman Brophy

Second: Councilman Hayes

All in favor.

Motion to close: Councilman Brophy

Second: Councilwoman Zamechansky

All in favor.

#14-109 Approval of the Amendment of the 2014 Municipal Budget

Councilman Manna asked if, due to the ongoing issues with the developer in town, there is any provision in the budget for extended legal fees.

Councilman Brophy responded that both engineering and legal fee budgets were increased due to this issue.

Motion to adopt: Councilman Brophy

Second: Councilwoman Zamechansky

Roll call vote: Council members Brophy, Correa, Hayes, Riquelme, Zamechansky-yes
Councilman Manna-abstained

#14-110 Approval of Budget Self-examination

Motion to adopt: Councilman Brophy

Second: Councilman Riquelme

Mr. Paster explained that statutorily two out of three years the budget can be self-examined by the Borough without having to be reviewed by the State.

Roll call vote: Council members Brophy, Correa, Hayes, Riquelme, Zamechansky-yes
Councilman Manna-abstained

#14-111 Adoption of the 2014 Municipal Budget

Councilwoman Zamechansky commended the budget committee for doing an outstanding job. There are still a couple of issues she is questioning but they can be discussed separately from the budget.

Councilman Hayes stated that this is the lowest municipal tax increase in three or four years.

Mr. Perkins stated the finance committee started at \$113.00 and the end result is \$47.00 per average household.

Councilman Brophy explained that last year there was a \$66.00 increase. The increases which were incurred were mostly contractual, garbage and trash removal, BCUA rates and state pension contributions.

Motion to adopt: Councilman Brophy
Second: Councilwoman Zamechansky
Roll call vote: Council members Brophy, Correa, Hayes, Riquelme, Zamechansky-yes
Councilman Manna-abstained

Review of Consent Agenda Items: All items with an asterisk are considered to be non-controversial by the Council and will be approved by one motion. There may be further discussion prior to the vote upon request of a member of the public or a Council member. Also, any item may be removed for further discussion or for roll call vote in which case the item will be removed and considered in its normal sequence as part of the general order of business.

RESOLUTIONS

#14-112 Designation of the *Star Ledger* as one of the Borough's Official Newspapers *

#14-113 Authorization of Fencing Project Change Order #1- \$28,318.00 *

Councilman Hayes asked if the change order was included in the original grant-Mr. Perkins responded that it was. Councilman Hayes complained about the necessity of change orders.

Councilman Brophy asked Mr. Perkins for clarification. Mr. Perkins explained that the overall grant exceeds the amount of the contract and confirmed to Councilman Brophy that there will not be any additional charges that won't be reimbursed by the grant money.

#14-114 Appointment of Edward Buzak as Special Counsel-COAH *

Councilwoman Zamechansky stated that she wanted people to know that they did listen to what was asked at the last meeting and brought in Mr. Buzak as special counsel for COAH.

#14-115 Recognition of "Municipal Clerk's Week" *

Councilwoman Zamechansky thanked the Municipal Clerk for doing a phenomenal job.

#14-116 Bills List *

Motion to open to the public on consent agenda items: Councilman Hayes

Second: Councilman Brophy

All in favor.

Motion to close to the public: Councilman Brophy

Second: Councilwoman Zamechansky

All in favor.

Motion to adopt the consent agenda: Councilman Brophy

Second: Councilman Riquelme

Roll call vote: Council members Brophy, Correa, Hayes, Manna, Riquelme, Zamechansky-yes

Administrator's Report

A grant application submitted to the DOT for Depew Street III improvements in the amount of \$149,000 was approved.

There will be a Memorial Day Parade meeting Thursday night at 6PM

The County is offering a number of incentives to participate in shared services with them.

Department heads and supervisors are required to attend a JIF seminar on loss

control and harassment June 6th.

A Community Development Block Grant to put in new lines on Cortland from Columbia to Erie in the amount of \$126,000 was approved.

United Water is doing a project on Sunset and Erie between Cooper and Johnson.

Mr. Perkins will be meeting with Cumberland Farms regarding making improvements to the house at 1 Gordon Street.

There have been multiple requests to ban smoking in the parks, which will be addressed.

There will be a "Relay for Life" event at the high school June 6th between 6:00PM and 6:00AM. All participants will be walking or running on the track for twelve hours, raising money for the American Cancer Society. Soft tone lighting has been requested.

There was no objection to this request.

Council Committee Reports

- Councilman Brophy

Ordinances and Resolutions

The committee has to meet to discuss several issues, one of which deals with commercial vehicles parked in residential driveways.

- Councilwoman Correa

Shade Tree Commission

The Councilwoman attended the Arbor Day Celebration at West Shore and presented them with a proclamation. They unveiled the brick path. There are still some bricks available-\$75.00 each, which can be inscribed.

- Councilman Hayes

Joint Land Use Board

The Joint Land Use Board meeting was held April 25th. One variance was approved for a West Shore Avenue site. The Master Plan Re-examination hearing was also held.

- Councilman Riquelme

No report

- Councilwoman Zamechansky

No report

Attorney's Report

Mr. Paster will hold off until closed session.

Mayor's Report

No report

The Municipal Clerk read the resolution to enter closed session to discuss:

Litigation-Landmark

Personnel-Police

Litigation-Police

Motion: Councilwoman Zamechansky

Second: Councilman Brophy

Roll call vote: Council members Brophy, Correa, Hayes, Manna, Riquelme, Zamechansky-yes

Following closed session:

Motion to go back into public: Councilman Hayes

Second: Councilwoman Correa
All in favor.

The Mayor requested that when the meeting is open for public comment residents speak only once and limit their comments to three minutes.

Mayor Kelly introduced Darlene Green, the Borough COAH Planner and Ed Buzak, Esq. who was appointed tonight as special COAH counsel, having expertise in COAH and Builder's Remedy.

1. Debby Tamburro, Roosevelt Avenue, stated that the engineer came to look at their homes and flood issues. She has pictures and a video of the flooding and needs help financially with a solution. A letter from the Mayor about a meeting was supposed to go out three weeks ago but was never received.

2. MaryAnn Russini, 141 Roosevelt Avenue, had photos of recent flooding. She is afraid to leave the house in case the pump stops working.

The Mayor said he would speak to the engineer and get his suggestions. He has already given a price for putting a pipe into the street. The money allotted for this doesn't cover the cost.

Ms. Russini said that the only way the pipe will work is if every house involved is connected.

Mr. Buzak explained that he has been retained by the Borough as a consulting attorney related to the COAH matters and exclusionary zoning lawsuit Dumont is involved with. He is not replacing the Borough attorney. His background in this field is very extensive; he handles these matters almost exclusively. He is one of the assistant counsels to the New Jersey League of Municipalities; he represented them in the lawsuit before the Supreme Court on the current COAH rules. He represents several towns in Bergen County as special counsel on affordable housing matters-Tenafly, Upper Saddle River, Englewood.

Mr. Buzak reviewed the Housing Element and Fair Share Plan, which was filed with COAH in December, 2013 and the exclusionary lawsuit that was brought against the Borough in February this year by Landmark. Every municipality has a constitutional obligation to provide a realistic opportunity for the share of affordable housing to be built within the boundaries of that municipality. You can't eliminate that but what you can do is control that by taking advantage of the process. You don't want decisions to be made for you by developers. The Borough's Joint Land Use Board adopted a Housing Element and Fair Share Plan last year and the Governing Body endorsed it and petitioned the Council on Affordable Housing for substantive certification. In the plan they set forth a proposal as to how they would satisfy their affordable housing obligation that was based on regulations that had been adopted by COAH. By filing that petition with COAH, an important protection was granted to the Borough-any lawsuit filed against the Borough as it relates to affordable housing issues will ultimately be transferred to COAH so that it can be integrated into the plan the municipality has proposed. The developer would have to demonstrate that our plan is insufficient to satisfy the constitutional obligation. If the Borough had not done that they would be vulnerable to this lawsuit. The Borough attorney has dealt with it. The Housing Element and Fair Share Plan

prepared by Maser is one of the best plans he has seen; it is a comprehensive plan, taking into account the regulations that were in existence at that time. The Supreme Court has invalidated the third round rules and ordered COAH to adopt new rules, which they have now proposed. The proposed rules have put Dumont in a better position than before. If these rules are adopted, they will not go into effect until November and will most likely be challenged by others.

Mr. Buzak has discussed the complaint with Mr. Paster and asked what his strategies dealing with the litigation are. These strategies need to be kept confidential or the Borough will lose any advantage they might have. This is why Mr. Paster and the Governing Body cannot disclose information.

Motion to open to the public: Councilman Brophy

Second: Councilwoman Zamechansky

All in favor.

1. Lynne Vietri, 41 Wilkens Drive: If the D'Angelo property is rezoned, she assumes that the following day Mary's lawyers would be asking Landmark for her money and be putting in a permit because the sale is contingent on that rezoning. Mr. Paster responded that there is a lengthy process. The overall strategy has not changed but the road to get there is being revisited in light of the new proposed regulations.

Ms. Vietri: if we have no units owed in any round, why would we rezone that property?

Mr. Buzak: As a result of the proposed regulations the zoning ordinance that is on for May 20th needs to be revisited. The Governing Body will be advised as to how the new rules would impact it and how to deal with the ordinance when it comes up that day.

2. Lily Binney, 32 Roxbury Road: background: the figures were released April 30th and a final version will be available June 2nd. There will be public comment for a period of sixty days. It is anticipated that the rules will become effective in November.

Mr. Buzak: The rules proposed by COAH get published in the *New Jersey Register* and that becomes the "official copy". There shouldn't be substantive changes from April 30th and what's published. Once they're published, there is a sixty day comment period, which is the time for people to vet those regulations and comment on them. Then there is another period for COAH to respond to those comments on some of the regulations. If they are revised significantly, they cannot be adopted in November; they have to be republished. Another alternative is to adopt them as they are in November and simultaneously introduce modifications so they follow the process. A schedule, including the November date, was set by the Supreme Court. If COAH doesn't follow the schedule, the Supreme Court would take back jurisdiction. Municipalities would then no longer be able to control their own destiny.

Ms. Binney: Our new numbers are: prior round obligation-0; Fair Share obligation-negative 9; rehab obligation-28.

Mr. Buzak corrected Ms. Binney-the prior round obligation is negative 238 or 239.

Ms. Binney: The only positive number is rehab, which is separate from prior and Fair Share. Fair Share and prior represent new units that need to be created; rehab reflects existing units that are below code standards and are likely occupied by lower moderate income families, determined by a state formula. The town has the ability to do

their own survey as an alternative to the formula and to rehabilitate any that are deemed below the code standard.

Mr. Buzak: The municipality's obligation would be to assist in rehabilitating those through a monetary process or alternative means. That obligation has to be satisfied by 2024.

Ms. Binney: Is it your plan to conduct a municipal survey to determine the accurate number of rehab units we owe?

Mr. Buzak: That decision has not been made yet

Ms. Binney: Does the Borough have an Affordable Housing Trust Fund set up?

Ms. Green: No

3. Adam Austin, Short Street: He doesn't like paying higher taxes so why are residents fighting something that's going to increase tax revenue? Let progress happen. All the farms around have been converted to developments.

4. Rachel Bunin, 9 Poplar Street: 450 people showed up outside to express their opposition to high density housing. She hopes Mr. Buzak would be here for the long haul to help Mr. Paster and Ms. Green. Based on the opposition to rezoning, she asked Mr. Buzak how the continued strategy to rezone to RB high density 42' buildings at twelve units per acre can be justified when it's clear the residents want them to fight against this rezoning, which they feel will be detrimental. She hopes the new COAH laws will change so that we can have single family homes as the worst case.

5. Cathy Doherty, 110 Roxbury Road: What is our municipality going to do to keep the new, more favorable rules for us in place? Will we be providing our commentary to support the rules as proposed.

Mr. Paster: It's not something we would challenge because it is more favorable to us than the prior rules.

Mr. Buzak: The comment period is used to raise negative issues. The numbers for Dumont seem favorable when first looked at but there may be things that are not favorable. We would probably recommend then that the Borough sends in comments to COAH about those things.

Ms. Doherty: Is there anything that prevents us today from rezoning this property as RA property? What would the risk be if this action were taken?

Mr. Buzak: The Governing Body is reconsidering what has been proposed there in light of the new rules. You have to give them the ability to think that through.

6. Linda Unger, 24 Larch Avenue: Will the ordinance be changing

Mr. Paster: In light of the new proposed regulations, it will be revisited.

Ms. Unger: What is a buildable limit adjustment?

Mr. Buzak: It relates to the capacity of the municipality to absorb housing and obligations that it has. Municipalities that have insufficient land can't accommodate the magnitude of the obligation the same as municipalities that have vacant land available. If you don't have vacant land available, you don't eliminate obligations that you have. You have to have an idea of repurposing property as it becomes available.

Ms. Green: Buildable limit takes into account the available land. It would not reduce the rehab obligation. Based on COAH's GIS analysis of the Borough, using DEP GIS data, the claim that Dumont can build seven more houses somewhere in town.

Ms. Unger: Rules that grant towns with less than 5% open space extra leeway as opposed to the previous 3% rules-does this impact buildable limits?

Ms. Green: In Dumont, where we have negative number for the prior third round, it would help us.

7. Matthew Balin, 12 Elizabeth Street: Improvements for better traffic flow to Washington Avenue should be considered.

8. Cathy Doherty, 110 Roxbury Road: we went to court requesting a stay until November 1st associated with the builder's remedy lawsuit and granted a stay.

Mr. Paster: It was neither granted nor denied. We were ordered to answer the complaint by May 14th.

Ms. Doherty: Based on your experience, do you expect the Judge is going to grant the stay until November 1st?

Mr. Paster: It's hard to say.

Ms. Doherty: How does a builder sue using the builder's remedy lawsuit when there are no round three obligations in existence?

Mr. Buzak: the focus in the Builder's Remedy lawsuit is to have a court determine that as of the date they filed their lawsuit, you haven't satisfied your constitutional obligation as of the date the lawsuit was filed; that includes your first and second rounds- those regulations were there. It's the third round that's invalidated. The Borough, by taking its action in December, petitioning COAH for substantive certification has created a context in which Mr. Paster is going to be able to successfully maneuver through this litigation in a way that will be advantageous to the Borough.

9. Jackie Corless, 52 Larch Avenue: A former councilperson kept calling in during meetings and voting. Has the Governing Body done anything to change this practice since an important vote is coming up.

Mayor Kelly: We haven't taken any formal action yet.

10. John Hochnagel, 30 Wilkens Drive: Are the prior obligations met with the new rules? When the lawsuit was filed, which rules will they go by?

Mr. Buzak: The answer to the first question is yes. The second question is more complicated.

Mr. Paster: We have submitted certified documentation and they are disputing it.

Motion to close to the public: Councilman Brophy

Second: Councilman Manna

All in favor.

Motion to adjourn: Councilman Manna

Second: Councilman Brophy

All in favor.

Meeting adjourned at 9:25PM

Minutes respectfully submitted by:

Susan Connelly, RMC
Municipal Clerk